

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 GOODYEAR DUNLOP TIRES OPERATIONS, :

4 S.A., ET AL., :

5 Petitioners : No. 10-76

6 v. :

7 EDGAR D. BROWN, ET UX., :

8 CO-ADMINISTRATORS OF THE ESTATE OF:

9 JULIAN DAVID BROWN, ET AL. :

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11 Washington, D.C.

12 Tuesday, January 11, 2011

13

14 The above-entitled matter came on for oral
15 argument before the Supreme Court of the United States
16 at 11:15 a.m.

17 APPEARANCES:

18 MEIR FEDER, ESQ., New York, New York; on behalf of
19 Petitioners.

20 BENJAMIN J. HORWICH, ESQ., Assistant to the Solicitor
21 General, Department of Justice, Washington, D.C.; on
22 behalf of the United States, as amicus curiae,
23 supporting Petitioners.

24 COLLYN PEDDIE, ESQ., Houston, Texas; on behalf of
25 Respondents.

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1 P R O C E E D I N G S

2 (11:15 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument next in Case 10-76, Goodyear Dunlop Tires
5 Operations v. Brown.

6 Mr. Feder.

7 ORAL ARGUMENT OF MEIR FEDER

8 ON BEHALF OF PETITIONERS

9 MR. FEDER: Mr. Chief Justice, and may it
10 please the Court:

11 The North Carolina Court of Appeals asserted
12 jurisdiction over Petitioners in this case on claims
13 that arose from a bus accident in France that was
14 unrelated to any North Carolina contact. Although the
15 Petitioners are located overseas and do not conduct any
16 business in North Carolina, the court held that North
17 Carolina had general jurisdiction over these defendants
18 based solely on the sale in North Carolina of a small
19 fraction of their products.

20 Under this Court's cases, the mere sale of a
21 defendant's products in a State does not permit the
22 State to reach out to assert judicial power over all of
23 that defendant's worldwide conduct. If that were
24 permissible, every significant seller of products would
25 be subject to suit everywhere on any claim arising

1 anywhere.

2 JUSTICE GINSBURG: There's one piece of this
3 I don't quite comprehend. You -- there's no contest
4 that there is jurisdiction over the parent, right?

5 MR. FEDER: Yes, Your Honor. The parent
6 company consented to jurisdiction in North Carolina.
7 It's appointed an agent for service of process there.

8 JUSTICE GINSBURG: So it's -- it's based on
9 consent?

10 MR. FEDER: Yes. They also have other
11 business that the parent does conduct in North Carolina,
12 but there's no objection to jurisdiction over the parent
13 here. This case solely concerns the Petitioners, who
14 are corporations from Turkey, France and Luxembourg.

15 JUSTICE KAGAN: Do you think there is
16 general jurisdiction over the parent? If the consent
17 were not in the picture, is there? Does general
18 jurisdiction go beyond State of incorporation, principal
19 place of business?

20 MR. FEDER: I think that that is a hard
21 question. Your Honor, the short answer is I think the
22 answer is no, but I think that that is probably a close
23 case, again putting aside the consent. But I do think
24 that general jurisdiction is about suing a company -- at
25 least in the case of corporations, is about suing the

1 corporation essentially where it's located or at home.
2 It's always fair to bring a suit against the corporation
3 there.

4 I think that once you get beyond that, which
5 is a situation that would be analogous to a State's
6 power over a citizen or a resident of the State, I think
7 you run into great difficulty finding a basis for the
8 State to assert authority over claims completely
9 unrelated to any business that -- or any contacts that
10 the corporation has with the State.

11 That said, it wasn't contested here, and
12 there is a consent to service of process, which may or
13 may not create general jurisdiction. There's a
14 disagreement in the lower courts on that, but none of
15 that is contested in this case.

16 And without having to get to that particular
17 question of whether in fact it's limited to -- whether
18 general jurisdiction is limited to place of
19 incorporation or principal place of business, first of
20 all, there's much more directly controlling authority.
21 In this case, the most directly relevant cases are
22 *Helicopteros* and *Consolidated Textile v. Gregory*,
23 working in tandem.

24 In *Helicopteros*, which was this Court's last
25 corporate general jurisdiction case, the Court said that

1 there was no general jurisdiction based on \$4 million in
2 purchases in the State and some other contacts; and the
3 key is that -- on that point, is that the Court held
4 that mere purchases could not provide the basis for
5 general jurisdiction because the pre-International Shoe
6 Decision in Rosenberg was controlling on that point.

7 JUSTICE KENNEDY: Again, this is preliminary
8 and it just goes back to Justice Ginsburg's question.
9 Suppose you could help me out. I assume that there is
10 general jurisdiction over the parent company. Then
11 under respondeat superior, it would be liable in North
12 Carolina for the -- all the acts of its agents?

13 MR. FEDER: I think that's a fair
14 assumption.

15 JUSTICE KENNEDY: Well, then why isn't it
16 automatically liable for all the acts of its
17 subsidiaries?

18 MR. FEDER: Well, because I think --

19 JUSTICE KENNEDY: And does that get -- and
20 does that get into what in the Federal practice would be
21 necessary parties?

22 MR. FEDER: What -- Your Honor, I think that
23 really what it gets into is the difference between a
24 subsidiary and an agent, because a subsidiary is not
25 automatically acting as the agent of the parent company

1 in a way where you would get respondeat superior. And I
2 think that part of what is going on in this case is that
3 when this does go back to North Carolina for trial or
4 for litigation against the parent company, I think that
5 under North Carolina or whatever State's or nation's
6 veil piercing or agency standards the North Carolina
7 courts will apply, the plaintiffs will have great
8 difficulty actually with the substantive case against
9 the parent company, because you would actually have to
10 show involvement in the actions that actually the claim
11 arose out of here.

12 The mere general control that's inherent in
13 the parent/subsidiary relationship is not going to
14 create liability, and here -- important to remember --
15 we're talking about a tire manufactured in Turkey,
16 accident in France, which Goodyear Tire and Rubber
17 Company -- and now this is outside the record, as I
18 understand it -- did not have any direct connection
19 with. Again not relevant to the jurisdictional question
20 here, but I -- just for sort of setting the context.

21 JUSTICE GINSBURG: You are met with an
22 argument that it's all one ball of wax, parent and sub,
23 they merge, it's one enterprise; and so if the subs do
24 something anyplace, the parent is -- it's all part of
25 one thing, so I think that was the principal argument

1 made by Respondents.

2 MR. FEDER: Yes, Your Honor, and I would
3 say, again when it comes to liability and Goodyear Tire
4 and Rubber, they will be free to make that argument.
5 That argument is not properly presented here. It was
6 never made below.

7 It was never -- it was not made in the brief
8 in opposition to cert, so any argument for ignoring
9 corporate distinctions or an enterprise theory, none of
10 that was made, and therefore has been waived. I think
11 that, secondly, as we indicated in our reply brief --

12 JUSTICE SCALIA: We haven't resolved a whole
13 lot if we leave that question open, have we? You want
14 us to write an opinion that says: Unless you -- unless
15 you ignore the separate corporate existence of the
16 subsidiary -- parenthesis, a question on which we
17 expressed no opinion, close parenthesis -- there can be
18 no jurisdiction in cases like this? Is that the kind of
19 an opinion that the world is waiting for?

20 MR. FEDER: Well, Your Honor, I think that
21 actually in -- if the Court were to write that, it would
22 be left with the important general jurisdiction question
23 that the court below decided incorrectly, and
24 incorrectly in a few ways.

25 I think that, in fact, there would be

1 several ways for this Court to approach it, all of which
2 would actually help to clear up the law in this area. I
3 think that even if one gets past the waiver point -- and
4 the reason the Court shouldn't get past the waiver point
5 is, among other things, because it wasn't raised -- we,
6 of course, had no opportunity to put in evidence that,
7 in fact, these corporations are run separately,
8 independent decisionmaking, observation of corporate
9 form, and all the other things that would normally go
10 into it.

11 If you want to reach it, first of all, there
12 is -- even on the standards articulated in the
13 Respondent's brief, there is nothing in the records that
14 supports it.

15 JUSTICE SCALIA: I thought you were saying
16 we should not even -- not even -- not even address the
17 situation where there is no special basis for ignoring
18 the separate incorporation. I -- of course, we should
19 not get into questions of whether, in fact, the
20 subsidiary was a sham, that there was control, all of
21 that.

22 MR. FEDER: Oh.

23 JUSTICE SCALIA: But the simple question of
24 whether when you have a totally owned subsidiary, its
25 actions are your actions.

1 MR. FEDER: That, I think, the Court --

2 JUSTICE SCALIA: Don't we have to reach
3 that?

4 MR. FEDER: You certainly do have to reach
5 that, Your Honor. The Court has reached it and decided
6 it before, and has said that the mere parent-subsubsidiary
7 relationship does not create attribution one to the
8 other, most recently in Keeton, in which the Court cited
9 some of its older cases for that very proposition.

10 And I think that in -- another way to look
11 at it is, even if you wanted to treat the sales in North
12 Carolina as if they were made there directly by these
13 Petitioners -- in other words, even if you picked --
14 assuming arguendo that you could attribute those sales
15 directly to the Petitioners and not, as the court below
16 found, treat them as not having been caused by them,
17 that does not come close to satisfying what is required
18 for general jurisdiction.

19 And in particular, in going back to
20 Helicopteros and Gregory, just as the Rosenberg case was
21 binding in Helicopteros on the point that mere purchases
22 are not enough for general jurisdiction, here
23 Consolidated Textile v. Gregory is binding on the flip
24 side of that, which is that mere sales in the State are
25 not enough for general jurisdiction.

1 Even if Gregory weren't binding, I think
2 that you could look at Helicopteros and say there is no
3 real basis for a distinction between mere purchases and
4 mere sales. But in fact, there is a case directly on
5 point, and as well as a lot of case law from the time of
6 Gregory more generally requiring much more substantial
7 -- substantial physical presence in the State.

8 In terms of -- I think no personal
9 jurisdiction argument should go by without talking about
10 International Shoe, and if you look at just the
11 International Shoe line of cases, even aside from this
12 issue of Gregory being binding, the decision below is
13 equally, if not more, untenable.

14 International Shoe itself recognizes -- in
15 sort of carving out an area for what eventually came to
16 be called general jurisdiction, it recognizes the
17 extraordinary nature of the State power that we're
18 talking about when we talk about general jurisdiction,
19 which is this power to reach out and assert State power
20 over things that by hypothesis have no relationship to
21 contacts with the State. International Shoe uses the
22 language saying that you need continuous corporate
23 operations within the State and says that these
24 continuous corporate operations have to be so
25 substantial and of such a nature as to justify this

1 jurisdiction over conduct that is entirely unconnected
2 to the State.

3 The one case where the Court has upheld
4 general jurisdiction since International Shoe over a
5 corporation is Perkins, which was a case that involved
6 the corporation's principal place of business, and in
7 Helicopteros, following Perkins, when the Court
8 articulated the standard there, the Court said that
9 we're looking to see whether there are contacts of the
10 sort that we found to exist in Perkins. So --

11 JUSTICE GINSBURG: Perkins is kind of an
12 unusual case, because it was a company that at the time
13 was doing business only in Ohio. It was a Philippine
14 mining company and it was World War II, so the mines
15 couldn't be run. So to the extent that the corporation
16 was existing anywhere, it was in Ohio.

17 MR. FEDER: That's right, Your Honor, and I
18 guess what I would say about that is that it's unusual.
19 Those are unusual facts, but not unusual in terms of
20 what is required to be able to assert general
21 jurisdiction.

22 The Court in Keeton later described Perkins
23 as essentially involving the corporation's principal
24 place of business, and I think that's right because in
25 order for the State to be able to assert jurisdiction

1 over things unrelated to the State, you need that type
2 of relationship equivalent to a citizen or resident that
3 gives a State authority over the corporation's actions
4 worldwide and not just -- because this goes far beyond
5 specific jurisdiction where the State has a manifest
6 interest in an accident or a claim that arose in the
7 State or connected to the State.

8 Helicopteros, just to circle back on that
9 point, does say, we're looking for contacts of the sort
10 found to exist in Perkins, and -- and as we said, said
11 that even \$4 million in purchases were not enough. I
12 think that all of those cases help to make it clear why
13 the mere sales here are not enough.

14 And if there are no further questions, I
15 would like to reserve the remainder of my time for
16 rebuttal.

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.

18 Mr. Horwich.

19 ORAL ARGUMENT OF BENJAMIN J. HORWICH,
20 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,
21 SUPPORTING PETITIONERS

22 MR. HORWICH: Mr. Chief Justice, and may it
23 please the Court:

24 The North Carolina State court was wrong to
25 assert general personal jurisdiction over Petitioners,

1 extending potentially to any claim against them arising
2 out of any conduct of theirs anywhere in the world, and
3 there are several ways to see why that's wrong. Even if
4 the Court were to accept the proposition that such
5 contacts with North Carolina as there are in the record
6 should be attributed to Petitioners, those contacts
7 still don't rise to the level of what this Court has --
8 has demanded in terms of continuous and systematic
9 contacts.

10 And even setting those more -- those more
11 precedential tests aside, I think there's also a -- the
12 result of the North Carolina court's decision is that
13 the jurisdictional consequences here would be quite
14 disproportionate to the contacts that -- that -- on
15 which it would be based.

16 So if I can, I guess, turn for a
17 moment to the continuous and systematic contacts
18 proposition, which this Court has certainly not
19 elaborated in its case law, but I think it -- it would
20 be -- I think it's useful to speak of, of what exactly
21 the Court was trying to get at. What we think the Court
22 was trying to get at, particularly by, as my friend
23 referred to, particularly by its reference in
24 *Helicopteros to Perkins* as -- as being sort of a
25 benchmark for what continuous and systematic contacts

1 are, I think it requires seeing an active volitional
2 undertaking by the -- by the defendant. It can't be
3 based on the contact -- conduct of third parties.
4 Obviously the continuous concept of existing without
5 interruption.

6 And with respect to systematic,
7 we think that that means there needs to be a plurality
8 of contacts, they have to be of -- of different kinds or
9 qualities in a sense of perhaps employment, as well as
10 contractual, as well as regulatory, as well as property,
11 as well as sales or purchases, and that those contacts
12 together have to have some interrelationship that
13 results in something that might be thought of as more
14 than the sum of their parts.

15 JUSTICE GINSBURG: Well, suppose it's just a
16 corporation that's registered to do business in North
17 Carolina, and the connection with that registration; it
18 says: I appoint so-and-so my agent to receive process
19 for any and all claims?

20 MR. HORWICH: Well, as -- as Mr. Feder
21 referred -- referred to, there -- there is a division in
22 the lower courts on whether that sort of a consent is
23 effective to permit the State general jurisdiction
24 over -- over the consenting party. That -- but the
25 Court has, I -- I think, been -- been fairly clear in --

1 in -- in setting notions of -- of formal consent to one
2 side when considering contacts-based cases. And, so, in
3 part, this case, therefore, doesn't present that
4 question and we don't have a position, as the
5 government, on that today, with respect to whether
6 that's effective.

7 But it certainly is the case that simply
8 because one entity in a Goodyear family of -- of related
9 corporations has consented, that somehow that consent
10 should extend to the entire enterprise. And if I can,
11 maybe, take a minute to talk about where we think the
12 Respondents' view of -- of this enterprise jurisdiction
13 goes wrong, because we touched on it only -- only
14 briefly in our brief, which was, of course, filed before
15 theirs.

16 When -- when a court confronts a -- a set of
17 -- a corporate family, if you will, there seem to be two
18 principles that can be usefully applied in determining
19 the jurisdictional consequences of that relationship.
20 One is the alter ego concept, which certainly doesn't
21 seem to be supported on anything in the record here in
22 the sense that there's -- that there's no sound
23 suggestion in the record that -- that the European
24 entities were somehow a sham, that they didn't have any
25 separate existence, they were undercapitalized or any of

1 the other indicia that you would see.

2 And, so, to your point, Justice Scalia, I
3 think it is certainly something the Court could say that
4 the record here is no basis for that kind of a decision
5 to disregard the corporate separateness.

6 Then the other concept is the agency
7 concept. And I think that may be what -- what
8 Respondents are placing somewhat greater reliance on.
9 And we certainly -- we certainly have the view that an
10 agent, acting on behalf of a principal within the scope
11 of its agency, can take actions that create contacts
12 with the jurisdiction that are, by virtue of the agency
13 relationship, attributable back to the principal.

14 But there are -- there are two important
15 things to realize, that that -- that that proposition is
16 somewhat modest in that, first of all, simply because
17 a -- a parent owns a subsidiary does not mean the
18 subsidiary is the parent's agent. Plenty of parents
19 simply own subsidiaries as property or for various
20 business reasons. It doesn't mean the subsidiary is
21 automatically always acting as the agent of the parent
22 for all purposes or any at all.

23 And -- and the second thing to be cautious
24 about in applying the agency principle is that the
25 agency relationship only runs one way. That is to say,

1 the agent can do something that creates a contact on
2 behalf of the principal, but that's not to say that
3 everything the principal does in its independent
4 activities says anything about what contacts its agent
5 has. That's exactly backwards.

6 In the -- and, so, here the -- the
7 allegation actually in the complaint is that the
8 European companies are the agents of the parent -- of
9 the -- of the Goodyear U.S. entity, that's -- that's
10 paragraph 16 of the complaint at page 112 of -- 122 of
11 the joint appendix. So it -- it might be -- it -- it --
12 there might be an argument that something that the
13 European subsidiaries have done, say, in Turkey is
14 something that could be chargeable to the U.S. parent in
15 a case where it was relevant what the parent's
16 relationship with Turkey was.

17 But what Respondents are asking for here, in
18 effect, turns that completely around and suggests
19 implicitly that the -- the -- this -- the parent of the
20 Goodyear organization in the United States was somehow
21 doing the bidding, acting at the direction and control
22 of the European companies as principals.

23 JUSTICE KAGAN: Mr. Horwich, could I ask you
24 a different kind of question, and I apologize in
25 advanced for taking you a little bit far afield? But --

1 but I wanted to ask you about a particular sentence in
2 your brief that seems to have some relevance to, not the
3 general jurisdiction question but some relevance to
4 specific jurisdiction. So this is on page 20.

5 You say: "If mere purposeful availment of
6 commercial opportunities in a particular State, which is
7 of course the test for a specific jurisdiction, if that
8 purposeful availment were sufficient to subject an
9 enterprise to the general jurisdiction of that State's
10 courts, a corporation that sold its goods to an
11 independent distributor intending that they be resold in
12 all 50 States could potentially be brought to judgment
13 in any State on any claim against it."

14 So I -- I take that -- I understand that to
15 read that you think that it is purposeful availment that
16 subjects a company to specific jurisdiction -- not to
17 general jurisdiction, but to specific jurisdiction -- if
18 a corporation sold its goods to an independent
19 distributor intending that they be resold in all 50
20 States. Am I reading that correctly?

21 MR. HORWICH: No, I don't -- I don't believe
22 so, in the sense that I -- I think we were sort of
23 assuming arguendo a concept of purposeful availment
24 that -- that would be willing to attribute those --
25 those contacts for purposes of a specific

1 jurisdiction -- excuse me -- for purposes of a specific
2 jurisdiction analysis. I don't know if that helps with
3 the -- with the answer, but --

4 JUSTICE KAGAN: No, I was hoping that the
5 answer would be yes, actually.

6 (Laughter.)

7 CHIEF JUSTICE ROBERTS: There's at least one
8 other person in the courtroom who was hoping that, too.

9 (Laughter.)

10 JUSTICE KENNEDY: I -- I -- I was wondering
11 why -- why is your interest in this case so much greater
12 than it would be in -- in the other case, and this --
13 I've been wondering that at the outset, and this
14 sentence that Justice Kagan points out brings that into
15 full focus.

16 MR. HORWICH: Well, Justice Kennedy, let
17 me -- let me put it this way. It -- it -- the
18 difference in our interest in the two cases is at bottom
19 just a difference in magnitude, but we think it's a
20 fairly significant difference in magnitude in the
21 sense -- in the sense that the jurisdictional
22 consequences of an assertion of general jurisdiction are
23 that -- with that one determination it is the case that
24 that defendant can potentially be brought to judgment in
25 a forum for all -- for claims arising from any of its

1 conduct anywhere in the world.

2 And specific jurisdiction by construction,
3 by its very nature, is only going to be a determination
4 -- whatever the contours of the specific rules that are
5 used, it's going to never be more than the determination
6 that jurisdiction in a claim, considering the
7 relationship between the defendant, the forum, and the
8 particular litigation gives rise to jurisdiction.

9 JUSTICE BREYER: So, why -- why -- I mean,
10 you've heard the argument in the last case. I mean, it
11 seems that potentially can subject the smallest
12 manufacturer to liability throughout the world because
13 it uses the Internet. And -- and that -- I don't know
14 what the foreign -- you have heard treaties discussed,
15 et cetera. Do you want to say anything?

16 CHIEF JUSTICE ROBERTS: And briefly.

17 MR. HORWICH: Yes, Mr. Chief Justice.

18 (Laughter.)

19 MR. HORWICH: The -- the -- the brief answer
20 is that the Internet questions, in particular, are so
21 complicated and indeed so potentially far-reaching that
22 in a case that presented them our interest might very
23 well be different.

24 (Laughter.)

25 CHIEF JUSTICE ROBERTS: Saved by the bell.

1 (Laughter.)

2 CHIEF JUSTICE ROBERTS: Ms. Peddie.

3 ORAL ARGUMENT OF COLLYN PEDDIE

4 ON BEHALF OF RESPONDENTS

5 MS. PEDDIE: Mr. Chief Justice, and may it
6 please the Court:

7 The Goodyear Petitioners ask this Court to
8 assist them in avoiding the jurisdiction of the North
9 Carolina courts. This Court should decline for two
10 reasons. First, there's nothing new here. Ample
11 evidence supports North Carolina's exercise of general
12 jurisdiction over the Petitioners under very well
13 established general jurisdiction and due process
14 principles. And --

15 JUSTICE GINSBURG: I think there's something
16 very new about this, because general jurisdiction is
17 all-purpose jurisdiction and for a corporation it's sort
18 of like a residence for an individual. I think Mr.
19 Feder was making that point.

20 What's -- what's troubling here is that the
21 North Carolina court seems to be blending the two
22 together, specific jurisdiction based on the claim
23 arising in the forum, and general jurisdiction with a
24 claim that has nothing to do with the forum, and it's
25 insertion of jurisdiction over any and all claims. And

1 I do not know of any case post-International Shoe. The
2 only thing that we have is Perkins v. Benguet.

3 Is there -- is there any case in which this
4 Court has sanctioned the assertion of general
5 jurisdiction based on some prior -- some product coming
6 into the State, not the product that caused the injury
7 abroad? I don't know any case.

8 MS. PEDDIE: Your Honor, if that's -- if
9 that's the characterization of the case and that's all
10 you had, then there wouldn't be a case. Our argument
11 here, and I think the -- what the -- what the evidence
12 in this case bears out is that is not the case here.
13 The characterization of the case by both the government
14 and by Petitioners is that there is simply mere sales
15 here and they ignore how the sales occurred.

16 Our focus is on how the sales occurred, and
17 I think Justice Scalia made a -- a correct distinction,
18 that what we're doing here is not talking about
19 attribution, that -- that sort of thing, and -- and
20 simply saying that because someone down the line sold
21 them, without any other discussion, there's general
22 jurisdiction. That's not correct.

23 JUSTICE KENNEDY: Well, then, you don't
24 defend the reasoning of the State supreme court?

25 MS. PEDDIE: I think that the -- the State

1 supreme court did a lot of things right, but, as we say
2 in the brief, we think that they took a detour in using
3 inappropriate stream-of-commerce language that isn't
4 there. It's not that they didn't have help doing it.
5 For example, the Petitioners have changed their tune
6 here. They talked routinely about purposeful avail --
7 availment in their briefs to the court of appeals and to
8 the supreme court. For example, page 327 of their brief
9 requests that they -- that they find purposeful
10 availment here. So the court had a lot of help.

11 But that part of the opinion we don't really
12 think is appropriate, nor is it necessary. The point
13 that I'm making about there being nothing new is that
14 there is ample evidence in this case to apply to the
15 general jurisdiction principles that were used in
16 Perkins and used in Hall and that can cause this Court
17 to reach the correct result.

18 As the Court is well aware, this Court can
19 affirm on any basis supported in the record, and we
20 believe that there is a basis in well-established rules
21 supported in the record, whether it agrees with the
22 court of appeals decision or not. It's not bound by
23 that analysis, nor are we.

24 I would like to address the question of
25 waiver because it's -- it's come up. I think that the

1 Solicitor General has correctly --

2 JUSTICE SCALIA: You -- you've got -- you
3 have me in suspense. Tell me why it is that the general
4 principles of jurisdiction do apply here, and then we
5 can get to waiver.

6 MS. PEDDIE: Okay, okay.

7 JUSTICE SCALIA: Don't leave me dangling
8 like that.

9 MS. PEDDIE: Your Honor, as far back as --
10 as Burger King, this Court recognized that commercial
11 activities when they're conducted on behalf of an
12 out-of-State party can sometimes be attributed. Even
13 the Solicitor General agrees that there's a different
14 jurisdictional analysis that may apply over and above
15 something like Cannon or Rush v. Savchuk, if there are
16 case-specific interactions between particular affiliated
17 corporations as you have here.

18 JUSTICE SCALIA: Excuse me. Case-specific
19 is not talking about general jurisdiction.

20 MS. PEDDIE: No, no, but --

21 JUSTICE SCALIA: It's talking about specific
22 jurisdiction.

23 MS. PEDDIE: But what they're talking about
24 are that there are evidentiary case-specific
25 interactions between the parties that would lead to the

1 conclusion of general jurisdiction and thus subjecting
2 them to suit on -- in dispute-blind -- or dispute-blind
3 jurisdiction.

4 In addition, this Court has used in a
5 variety of other areas a unitary business principle for
6 local taxation in Mobil. And even as far back as 15
7 years ago, the Hague Convention, our trade partners that
8 are complained of here, talked about the fact that
9 using -- attributing contacts or counting contacts that
10 were based on conduct performed by others was
11 appropriate and was not really a sticking point and that
12 they were perfectly content to leave that to other
13 cases.

14 JUSTICE SCALIA: Okay. Just give me a list
15 of -- of what -- what factors you think support general
16 jurisdiction here.

17 MS. PEDDIE: In terms of the --

18 JUSTICE SCALIA: One, two, three, four,
19 which ones are they?

20 MS. PEDDIE: Okay. Okay. In this case I
21 think it's the part -- and frankly we'll use the
22 Solicitor General's definition of a system, from their
23 brief at -- at page 23 where they talked about conduct
24 that forms a system and aggregation of objects united by
25 some form of regular activity or interdependence.

1 Using their definition, I think you ask the
2 question: Is a defendant part of a continuous business
3 system or enterprise that conducts general business
4 activities in the forum? And the first question you
5 asked is: Is it a single system or an enterprise? This
6 Court has said in Mobil Oil that a unitary business is
7 identified by --

8 JUSTICE GINSBURG: -- we don't have anything
9 in the record about this being a unitary business.
10 Unless you're trying to present some sweeping, piercing
11 the corporate veil theory, there is nothing here that
12 says that these are -- corporations are not acting
13 separately, that have their own officers, have their own
14 employees, keep their own books. There's nothing to
15 show that it's all part of one --

16 MS. PEDDIE: I disagree with that, Your
17 Honor. Under the sort of traditional measures that the
18 Court has used in terms of -- of ownership, et cetera, I
19 don't think there is anything. But even the Solicitor
20 General concedes at page 27 of their brief that the
21 court of appeals effectively treated the parent and
22 subsidiary corporations as an undifferentiated entity
23 for distribution of the Petitioners' product, and that
24 was our position below. And I think if you look at --

25 JUSTICE SCALIA: Well, the question isn't

1 whether they did that; the question is whether it was
2 right to do that.

3 MS. PEDDIE: That -- that --

4 JUSTICE SCALIA: I mean, you don't make your
5 point by saying that the court of appeals made a
6 mistake.

7 MS. PEDDIE: No, no. But I think -- I think
8 what -- what -- at least as I understood her question --
9 and I may have misunderstood her question -- was is
10 there anything in the record where, where they had done
11 that. I think the -- the evidence in the record is part
12 and parcel of the fact findings that the trial court
13 made about the existence of a highly integrated supply
14 and distribution system in the -- that operates in the
15 State.

16 The number of tires, for example, the
17 Petitioners manufactured in North Carolina was
18 determined solely by orders that were solicited in North
19 Carolina by Goodyear and forecasts made by Goodyear
20 based on data that they gathered there. On the
21 distribution side, the testimony from Mr. Kramer was
22 that they don't send tires for distribution, they don't
23 do any distribution. It was an internal distribution
24 system.

25 JUSTICE SCALIA: Well, I mean, those

1 arrangements could exist with a lot of distributors.
2 You don't want to ship a distributor stuff that the
3 distributor is not going to be using.

4 MS. PEDDIE: Your Honor, I think --

5 JUSTICE SCALIA: I mean, my goodness. The
6 fact that you coordinate with your distributor how much
7 of your product you are going to ship to him doesn't --
8 doesn't really show --

9 MS. PEDDIE: Your Honor --

10 JUSTICE SCALIA: -- that you are a unitary
11 business with your distributor.

12 MS. PEDDIE: Your Honor, I think this goes
13 way beyond coordination. For example, Mr. Kramer
14 testifies that, quote, "their job is just to be given a
15 forecast or a ticket, and then they just build widgets,
16 that's all they do." They were complete -- their --
17 their solicitation and their production was solely based
18 on the control and the requests from the parent. The
19 requests, as he testified, quote: "Emanate from the
20 request that Goodyear would make," and the production
21 and supply system was the same for all of them.

22 On the distribution side the testimony was
23 even more -- I think was even more limited, in that he
24 said the plant in Turkey doesn't control any
25 distribution. They wouldn't send anything into United

1 States without the approval and sanction of the parent,
2 and anything else, quote, "just doesn't happen."

3 So this was a closed system, it was
4 dominated by -- by the Goodyear parent, and there wasn't
5 a question of coordination. It was they didn't produce
6 unless the parent told them to; they sent it where the
7 parent said they should send it to; and when it got to
8 the United States, the testimony is, is that the parent
9 controlled it at that point.

10 JUSTICE GINSBURG: But the "it" wasn't the
11 product that caused the injury here. As I understand
12 the case the tire that allegedly caused this bus to turn
13 over was designed for the European and Asian market, not
14 the U.S. market.

15 MS. PEDDIE: The Goodyear Regional RHS tire
16 that was on the bus and that failed was not generally
17 designed for the U.S. market, although it was brought
18 over here under special circumstances.

19 The tires we're talking about are of three
20 kinds. There are passenger and bus tires that you would
21 ordinarily see that would be sold individually; second,
22 a second category are tires that were sold as original
23 equipment on cars and buses; and third, and the
24 predominant type that were sent to the United States,
25 were specialty tires for so-called low boy trailers

1 which were horse trailers, boat trailers, of which there
2 are in many North Carolina.

3 JUSTICE GINSBURG: But why did -- why should
4 -- Mr. Feder brought up the Helicopteros and he said in
5 that case it was purchase; and in this case it's sales,
6 and in the purchaser case certainly we said no, there's
7 no general jurisdiction. Why should it be any
8 different?

9 MS. PEDDIE: I think the distinction between
10 Hall and Perkins is not so much purchases and sales,
11 it's: Which contacts do you count? And the language
12 that is sort of forgotten in Hall is the language they
13 talk about. You needed to have the same general
14 business contacts that you had in Perkins.

15 I think the difference is, is that purchases
16 are sort of a one-shot deal. They may be supplies,
17 but -- they're more regular, but the core business is
18 selling, is selling items, and so sales count more than
19 purchases.

20 I apologize for interrupting.

21 JUSTICE GINSBURG: In Perkins it was the
22 home of the corporation. There was no other at the
23 time, because their permanent home was not functioning
24 because of the war. So there was only one place.

25 MS. PEDDIE: Your Honor, I think the facts

1 of that case are -- is that one officer of the
2 corporation came home, and he was -- he maintained --

3 JUSTICE GINSBURG: He was the president of
4 the corporation?

5 MS. PEDDIE: He was the president of the
6 corporation.

7 JUSTICE GINSBURG: And whatever business it
8 was doing, it was doing from that office in Ohio.

9 MS. PEDDIE: Right. And the Court
10 characterized that -- I think there was a difference in
11 what the Court did in Perkins and how it was described
12 in Keeton. That's the language the Petitioners have
13 used.

14 But the language that the Court used in
15 Perkins was that the decision was based on the
16 supervisory activities; not the fact that it was the
17 principal place of business, but the fact that the
18 supervision over, for example, the renovation of the
19 factory after the war took place in the forum.

20 JUSTICE GINSBURG: May I ask you about the
21 ramifications of your theory of this general
22 jurisdiction in North Carolina over these three
23 subsidiaries?

24 Suppose that one of the children on the bus
25 was a Canadian citizen, was going home to Canada, and

1 had the idea that juries in North Carolina are more
2 liberal than in France -- well, there wouldn't be any
3 jury. So could the Canadian come and sue because
4 there's general jurisdiction in the United States?

5 MS. PEDDIE: I think it would depend upon a
6 lot of factors, Your Honor. Are you assuming that
7 there's -- it's established that there's general
8 jurisdiction there, or are we in the same fact pattern
9 as here?

10 JUSTICE GINSBURG: No, we're talking about
11 Goodyear and these three subsidiaries. You say there's
12 general jurisdiction in North Carolina. Those companies
13 can be sued on any and all claims.

14 So my question is: Could anyone on that bus
15 that turned over in Paris come to North Carolina to
16 bring the wrongful death or whatever suit?

17 MS. PEDDIE: I think in theory, they could.
18 I think in practice, the case would never stay there
19 because of the controls we talked about on forum
20 shopping, about, particularly, forum nonconvenience.
21 One of the suggestions, for example, that we made is one
22 may want to consider for due process purposes the
23 residence of the plaintiff. Is it fair, for example, to
24 have a case in North Carolina where the plaintiff
25 doesn't live in North Carolina, as they do here, but

1 lives in Canada?

2 So that's -- that's one limitation. And as
3 this Court said in the Sinochem case, you can look at
4 the forum non conveniens before you look at the
5 jurisdictional issue.

6 JUSTICE KENNEDY: Well, that's an -- that's
7 an odd way to think about general jurisdiction. General
8 jurisdiction is principally status. Your residence, the
9 principal place of business, the place of incorporation.
10 And these factors that you're mentioning, they're -- in
11 fact, some of the factors you mention in the brief are
12 quite different than that.

13 MS. PEDDIE: Your Honor, I think if -- if
14 the limitation -- if the Court's view is basically the
15 Petitioners', that you are limited to principal place of
16 business, State of incorporation, and physical presence,
17 which we don't think is the State of the law, and
18 frankly, if it were the State of the law, then we would
19 have a Hague convention now and it wouldn't have taken
20 20 years to negotiate.

21 If -- if that's the position that the Court
22 is taking, then I don't think that, you know, this case
23 represents something different. I think that the State
24 of the law is that -- or at least the professed State of
25 the law is that it is based on continuous and systematic

1 contacts.

2 JUSTICE SOTOMAYOR: Let's assume that you're
3 right, that on some level that some -- that it's not
4 just the place of incorporation or the principal place
5 of business, that it could be created by something more.
6 The only something more here is Goodyear USA, so your
7 adversary is right that what you're asking us to do is
8 sort of a reverse principal-agent.

9 You're saying that the subsidiary has used
10 the principal, its owner, as its agent. That's
11 really -- that's the core problem with your argument,
12 isn't it? Because without the Goodyear USA activities,
13 there's no other activity by the foreign corporations.

14 MS. PEDDIE: Your Honor, I think what we're
15 talking about is not so much attribution as more of a
16 merger or a joint activity. What we're saying is that
17 there is a system, by the Solicitor General's own
18 definition, to kind of interdependent relationship that
19 the solicitor general --

20 JUSTICE SOTOMAYOR: Does good -- do any of
21 these companies, the Goodyear Turkey Company, the
22 others, do any of them sell the tires directly to
23 Goodyear USA for distribution to the United States? As
24 I understand it, these tires were sold to other
25 entities, foreign entities, who then sold them to the

1 U.S.?

2 MS. PEDDIE: That's -- that's not borne out
3 by the record. It was represented by the Petitioners.
4 We put a footnote in the brief that the citations they
5 give do not bear that out. There's nothing in the
6 record, and we've read it twice since then. It
7 indicates they have sold and they have backed off on
8 that in their reply brief.

9 Instead, there were three methods of
10 distribution. They are discussed at page 265 of the
11 brief. Items were either sent directly from the factory
12 to the buyers that were identified by Goodyear. They
13 were either then sent to Goodyear that took ownership or
14 took possession of them when they arrived in the United
15 States. They were put in a warehouse and sold outside,
16 but there were several distribution methods.

17 JUSTICE SCALIA: Page 265 of the brief? I
18 didn't read that many pages.

19 MS. PEDDIE: Excuse me. Page 265 of the
20 Joint Appendix. I'm sorry, Your Honor.

21 JUSTICE KAGAN: This is just a -- this is an
22 I'm-just-curious question: Why do you care? You have
23 Goodyear USA, which has consented to jurisdiction. Why
24 does it make a difference to get these other companies
25 in the North Carolina courts? Does North Carolina not

1 make Goodyear USA substantively liable for this
2 accident?

3 MS. PEDDIE: Your Honor, North Carolina has
4 particularly Draconian requirements for piercing the
5 corporate veil and alter ego, some of which Petitioners
6 refer to. For example, the proximate causation of the
7 wrong has to be related to the domination and control,
8 and so ideally it would be great if we could go back and
9 simply deal with them and let them collect from their --

10 JUSTICE KAGAN: So -- but what you're
11 saying, then, is that North Carolina treats the parent
12 and the subs very differently as a matter of substantive
13 law, but you would want identical treatment as a matter
14 of jurisdiction?

15 MS. PEDDIE: Right. They have very -- in
16 most states, frankly, there's a -- a lesser requirement
17 for the exercise of jurisdiction, merely allowing the
18 suit to go forward, than there is for actual imputation
19 of liability or imposition of liability, and so North
20 Carolina, I think, is a very good example of that.

21 They have a fairly liberal requirement or
22 state of the law that we cited in the Manly case, where
23 general personal jurisdiction exists over a foreign
24 corporation where it is controlled by or controls a
25 local corporation. And that's the white confectionary

1 case that we cited in the -- excuse me, the chocolate
2 confectionary case cited in the Manly case.

3 JUSTICE SOTOMAYOR: I'm not sure that that
4 answered -- I understood you to be saying that
5 substantively, they might not be liable for the defect
6 that caused the accident. Is that it?

7 MS. PEDDIE: Yes. I mean, we -- I think you
8 have to understand that this case is at a very embryonic
9 state. We have done no discovery in this case. This
10 was an appeal, an interlocutory appeal from the denial
11 of a motion to dismiss, and so there's been one
12 deposition on a very limited jurisdictional issue, so
13 we've not had an opportunity to develop the facts.

14 We hope we will be able to develop those
15 facts, but what we're faced with here is a situation
16 where North Carolina would permit the exercise of
17 jurisdiction under its well-established law on general
18 personal jurisdiction, but when it comes to the
19 imposition of liability for substantive purposes, that
20 may be a much, much, much tougher sledding. And so in
21 order to preserve the interests of our client, we've --
22 we've gone down this road as well.

23 JUSTICE GINSBURG: Do you have any case law
24 that supports your position, which, I take it -- and
25 correct me if I've got it wrong -- that a subsidiary is

1 subject to jurisdiction wherever the parent is, so long
2 as some products made by the subsidiary are shipped by
3 the parent to the -- to buyers in the foreign State?

4 MS. PEDDIE: No, Your Honor, because that's
5 not our position here. Our position is that if you
6 participate in this kind -- not a general, but in this
7 kind of very tightly controlled system, distribution and
8 supply system, then there is general jurisdiction in the
9 forum over the foreign subsidiary that participates in
10 this. But simply generally having a parent subsidiary
11 relationship and shipping goods into the forum, that's
12 not what we're contending. And frankly, I don't think
13 that that would be a situation in which general
14 jurisdiction would apply.

15 JUSTICE GINSBURG: I see nothing in the
16 North Carolina court's opinion that explains that this
17 is the -- this is a corporation where we can obliterate
18 the distinction between parent and sub.

19 MS. PEDDIE: Your Honor, they do talk
20 repeatedly about the existence of this highly integrated
21 distribution system. I think it might be helpful to
22 sort of flip it over and say what would happen if we
23 adopted the Petitioners' view that you ignore the
24 system, and all you look at is a -- is a few sales? I
25 think that then you would end up with a situation that

1 would be unfair to the State of North Carolina in terms
2 of providing a forum for its residents.

3 For example, if I may give a hypothetical,
4 if you have a, not a manufacturing plant in Turkey, but
5 let's say in China that is producing massive amount of
6 tires for importation into the United States, thousands
7 of tires, in this same distribution system, based on
8 their view that it has to be principal place of
9 business, state of incorporation, and that mere sales
10 are not -- don't count, and it has the same jurisdiction
11 system, then even that, that producer, and frankly,
12 Goodyear is one of those producers, wouldn't be liable
13 in North Carolina if the injury occurred someplace else.

14 JUSTICE GINSBURG: There's -- there's a --
15 you open your brief saying something to the effect that
16 this case is about outsourcing. Jobs in the U.S. going
17 to some subsidiary port. But then these subsidiaries
18 are making tires, which on your own admission, very
19 rarely come to the United States because they're
20 designed specifically for vehicles in Asia and in
21 Europe, and so I would think that Turkey would be the
22 ideal location for -- for such a place. I don't get
23 your outsourcing pitch.

24 MS. PEDDIE: Your Honor, our -- our position
25 here is that you will incentivize outsourcing if you

1 agree with the Petitioners' view. With regard to the
2 existing plants, 1,500 miles, which is the distance from
3 Istanbul to Paris, is -- is not exactly local
4 production. But what we're talking about is, again,
5 something like the example that I gave you of a
6 production in China, that you have, and -- and it's
7 based on the definition that we make of outsourcing,
8 which are jobs that simply were in the United States.

9 If a CEO is faced with a situation of
10 locating a plant in -- in North Carolina and subjecting
11 the production of that plant, even if it's completely
12 for export, and particularly if it's completely for
13 export to the jurisdiction, the general jurisdiction of
14 the State courts, and can put that plant in China and
15 send items around the world and not be subject to the
16 jurisdiction of North Carolina, where do you think
17 they're going to put that plant?

18 Now, I don't disagree that --

19 JUSTICE SCALIA: Would they rather be sued
20 in China?

21 MS. PEDDIE: I think they would rather be
22 sued in China.

23 JUSTICE SCALIA: I wouldn't. I don't know
24 anybody who would.

25 MS. PEDDIE: Well --

1 CHIEF JUSTICE ROBERTS: Don't you think
2 that's a question as to which we ought to have some
3 sensitivity of the views of the United States expressed
4 here by the solicitor general? It certainly implicates
5 foreign relations concerns.

6 MS. PEDDIE: Your Honor, I think that the --
7 well, let me answer this in two ways. The first way is
8 the policy considerations, either on our side or their
9 side, are not due process issues.

10 And the second point that I was going to
11 make was the idea that the due process clause doesn't
12 trump the exercise of jurisdiction over the Petitioners
13 here based on policy. Instead, it has to be a showing
14 of unfairness --

15 CHIEF JUSTICE ROBERTS: I thought your
16 argument about outsourcing sounded an awful lot like a
17 policy argument to me?

18 MS. PEDDIE: Well, it is a policy argument,
19 but I think, Your Honor, that in all candor, I think we
20 felt the need to -- to respond to the policy arguments
21 of not just the government but also to the other side.

22 I would -- I would say, let me -- if I might
23 complete -- complete the other thought, is that all of
24 those considerations, as interesting as they are, as
25 compelling as they may seem, you know, are not due

1 process considerations. This Court really isn't
2 empowered to restrict the jurisdiction of State courts
3 based on assisting the United States in negotiating
4 trade treatise, instead it has to be based on unfairness
5 and showing of undue burden.

6 With regard to -- getting back to the --

7 JUSTICE SCALIA: It's just not unfairness
8 and undue burden. It's a matter of what -- what power a
9 sovereign has.

10 MS. PEDDIE: That's --

11 JUSTICE SCALIA: I mean, it could be
12 perfectly fair if you announce that you're going to
13 assert jurisdiction over anybody who harms an American
14 citizen anywhere in the world, and you give notice to
15 every manufacturer in the world, that would be perfectly
16 fair. But you have no power to do that under -- under
17 accepted notions of what a sovereign can do.

18 MS. PEDDIE: And -- and it would be tempered
19 by the -- the -- the burdens test that is articulated in
20 Asahi and elsewhere, but none of that impacts, you know,
21 policy considerations such as trade negotiations,
22 et cetera. And the focus has been fairness and balance
23 of interests. And here you have a -- a manufacturer and
24 you have Petitioners who voluntarily participated in an
25 enterprise that operates in the State here. And we

1 think that there's nothing unfair about -- when they
2 agreed to deal with this, when they made money off of
3 doing this, when they do this on an ongoing basis,
4 there's nothing unfair about -- about subjecting them to
5 liability there.

6 And particularly when you look at the Asahi
7 factors, there's really no burden on the defendants
8 here. One of the things that the Petitioners did not
9 respond to in our -- our brief is the notion that no
10 matter what this Court decides, two of these Petitioners
11 are going to be litigating in a foreign country
12 anywhere. And the only thing that they have interjected
13 as a burden is the presumptive burden of litigating in
14 another country. They're going to be litigating in
15 another country unless a court atomizes this case and
16 says that the Petitioners have to litigate in four
17 different states.

18 So there's nothing -- there's nothing to
19 sort of suggest that there's -- there's any burden nor,
20 therefore, a basis for restricting the jurisdiction of
21 the North Carolina State courts based on due process
22 concerns.

23 By contrast -- and the other thing that --
24 JUSTICE SCALIA: Only if you believe that
25 burden is the only issue. The issue is power, not just

1 burden.

2 MS. PEDDIE: That's, that's correct, but the
3 -- but at least this Court has said since *Pennoyer v.*
4 *Neff* that the power is tempered only by the Due Process
5 Clause, not about policy concerns. And, so, it -- as --
6 as I think the Court is perfectly correct that it may be
7 fair to announce this to the world, but it's up to this
8 Court to determine whether due process would restrict
9 the exercise of that power, and it does it on an
10 enunciated set of factors, none of which includes
11 assisting the United States in negotiating trade
12 treatise.

13 The Petitioners, I think as we've suggested,
14 have not really shown any sort of burden here, and they
15 would be litigating with the same lawyers in the -- same
16 lawyers in the same forum as their parent. And the
17 Court has observed that even the kinds of litigation
18 that would take place, the burdens on litigating in a
19 foreign -- foreign forum are much reduced, and that was
20 in 1957, the year that I was born.

21 The primary objections here are based on
22 trade. I think it's -- it's interesting that the
23 government has -- has talked about those, but I don't
24 think that's a basis for restricting jurisdiction.

25 JUSTICE GINSBURG: Could you go back? And

1 you -- you said something about the two of them are
2 subject to suit, you said this is a question of one
3 lawsuit instead of four. Could you --

4 MS. PEDDIE: Well, for example, the parent
5 and the three Petitioners all have principal places of
6 business in four different countries. And we have
7 general jurisdiction over the parent in the forum. We
8 have the same lawyers that are representing all the
9 parties in the forum, and we intend to go forward in
10 the --

11 JUSTICE GINSBURG: What about France?

12 MS. PEDDIE: Well, in France the -- the
13 Petitioners from Luxembourg and from Turkey, if they
14 litigate in France, they're going to be litigating in a
15 foreign country as well. And, so, our question is why
16 is it somehow more convenient to litigate in France than
17 it is in the United States when you've got the same
18 lawyers --

19 JUSTICE GINSBURG: It's not a question of
20 more convenience. It's a question that the claim arose
21 there, and then, of course, just because the claim arose
22 there, there would be some convenience factors. All the
23 witnesses to the accident are there, whatever is left of
24 the bus is there.

25 MS. PEDDIE: Well, those -- those are the

1 forum non-convenience issues that -- that a -- that a
2 court would consider. But I'm talking about the due
3 process question in terms of investigating the -- the
4 actual burden on the Petitioners in litigating in the
5 forum. And the only thing that they've really focused
6 on is their preference for that forum, which is not a
7 due process concern.

8 Thank you.

9 CHIEF JUSTICE ROBERTS: Thank you, counsel.

10 Mr. Feder, you have 5 minutes remaining.

11 REBUTTAL ARGUMENT OF MEIR FEDER

12 ON BEHALF OF PETITIONERS

13 MR. FEDER: Thank you, Your Honor.

14 The purported integrated distribution that
15 Respondents are pointing to as the basis for ignoring
16 the corporate separation here, whatever else you could
17 say about it and whether it's really any different from
18 normal coordination, it only relates to the tiny
19 fraction of Petitioners' business that involved tires
20 going to the United States.

21 So -- where they didn't normally market
22 their products -- and so, of course, everything that
23 they sent to the United States was only when the U.S.
24 affiliate reached out to get tires. That does not --
25 under any theory of which I'm aware, even the most

1 aggressive enterprise theory, that would not account for
2 a basis for merging the two companies and treating
3 parent and sub as if they were one.

4 As far as the hypothetical about China goes,
5 I wanted to briefly address that. Of course, to the
6 extent that there are a lot of tires sent in from China
7 or anywhere else to North Carolina or any other State,
8 there will be specific jurisdiction most likely in those
9 cases.

10 Our position here is simply that the fact
11 that tires are coming in, of which you may have specific
12 jurisdiction, is no basis to say that you can also bring
13 in North Carolina what general jurisdiction would allow
14 you to bring: claims from workplace accidents in China,
15 lease disputes, and whatever else.

16 JUSTICE SCALIA: What about special
17 jurisdiction? Why don't -- why we decide this on the
18 basis of special jurisdiction? It's an accepted basis
19 of jurisdiction. Citizenship is. Countries can make it
20 a crime -- in fact I think Italy does, to kill an
21 Italian citizen abroad, and that person can be tried for
22 that crime in Italy. So I assume that -- that that is
23 an acceptable basis of jurisdiction.

24 So why don't we say that there's a
25 specialized jurisdiction when a citizen of -- of North

1 Carolina is -- is injured abroad, so long as there is,
2 what -- what is the word? The submission to the -- to
3 the courts of North Carolina by having enough contacts
4 with North Carolina. The previous case, what's that
5 crazy word?

6 MR. FEDER: Availment.

7 JUSTICE SCALIA: Availment. I meant to look
8 that up. I'm not sure -- I'm not sure it's ever been
9 used except in this courtroom.

10 (Laughter.)

11 JUSTICE SCALIA: Why -- why don't we decide
12 it that way?

13 MR. FEDER: Well, Your Honor, I don't -- I
14 don't think our law has a concept of special
15 jurisdiction like that, as consistent with the Due
16 Process Clause, and I think that even -- I won't purport
17 to speak for the Respondents in the other case, but I
18 think that they would probably agree that if the
19 accident had happened to a New Jersey citizen in France,
20 that that would not create, even under their
21 stream-of-commerce theory jurisdiction.

22 Under our due process precedents, you need
23 purposeful availment and for general jurisdiction, of
24 course, you need quite a bit more than that. And so
25 while creative, I don't think that would quite carry the

1 day.

2 JUSTICE GINSBURG: There is a country that
3 has this -- what Justice Scalia -- France in the civil
4 code says that any French citizen can sue anybody on any
5 claim in France. But we consider that an exorbitant
6 jurisdictional rule.

7 MR. FEDER: We -- we do, Your Honor, and
8 obviously we wouldn't recognize that under our Due
9 Process Clause, and I think it points up some of the
10 reasons why, at least at the margins, it is important to
11 be able to negotiate treaties so that we can avoid
12 having that sort of jurisdiction exercised against our
13 citizens, just as within the European Community they
14 have an agreement that it's not exercised within that
15 community.

16 If there are no further questions --

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.
18 The case is submitted.

19 (Whereupon, at 12:16 p.m., the case in the
20 above-entitled matter was submitted.)

21

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